

CITY OF DENTON CITY COUNCIL MINUTES

October 6, 2014

After determining that a quorum was present, the City Council convened in a Work Session on Monday, October 6, 2014 at 11:30 a.m. in the Council Work Session Room at City Hall.

PRESENT: Mayor Pro Tem Engelbrecht, Council Member Gregory, Council Member Hawkins, Council Member Johnson, Council Member Roden, Council Member Ryan, and Mayor Watts.

ABSENT: None.

A. ID 14-0604 Receive a report, hold a discussion and give staff direction regarding a proposed convention center.

Jon Fortune, Assistant City Manager, stated this was a status report on some of the key items of the project and to discuss next steps and critical dates. Tim O'Reilly, representing O'Reilly Hospitality Management (OHPD) and Shannon Earls, representing Clark Construction Company were present at the meeting. The last action taken by Council was the approval of the project plan and financing plan which dictated how the TIRZ revenue would be spent. Staff had presented the project update to the DISD and provided them a draft participation agreement should they choose to participate in the project. The DISD was scheduled to consider the topic on October 14th with possible action on the agreement. DISD participation was conditioned on the participation not having an adverse action on their State funding formula. If the State ever determined that such an agreement had an adverse effect on the funding formula, the DISD would be able to cancel participation. He was scheduled to present the agreement to the County the next day. There were no participation conditions similar to the DISD on the County. The County was scheduled to give direction tomorrow with action on October 14th.

Council Member Hawkins questioned what kind of situation would prompt the State to make such a decision.

Fortune stated that the District could not participate on the Operation and Maintenance side of the financing as that would give the appearance of giving money to another taxing entity. That restriction did not exist on the Interest and Sinking fund side.

Mayor Watts stated that it would be hard to agree with that term in the participation agreement that could opt out if something happened. If the DISD would opt out there would be a deficit of the debt payment and someone would have to make that up. If that possibility existed, it needed to specify that in the contract.

Council Member Roden asked what were some of the issues/concerns expressed by the DISD regarding Fortune's presentation.

Fortune stated that there were mixed comments and conversations regarding the role of the DISD in such a project. There was some strong support to partner with the City to advance the project forward as it would be good for both entities. The tone of the questions indicated that there still some mechanical issues.

Fortune stated that in terms of the construction and construction elements, the original project cost was several years old. The bids received for the project were much higher than anticipated and staff was worked on making the best uses of the dollars available. The Council discussed the

anticipated total budget of \$25 million and concern was expressed that further reductions could change the nature of the building in such a manner that it no longer met the City's long-term objective for the facility. Staff was directed to obtain final pricing on the reduced design configuration, knowing that the final price would be closer to \$28 million as long as OHPD continued to support the rent structure of the Master Development Agreement at the higher figure.

Council Member Ryan stated that it appeared that the funding for furniture/fixtures had dropped again.

Fortune stated that the movable partitions that currently were listed as furniture and fixtures were moved into construction costs and were treated as part of the building.

Council Member Ryan questioned where the project manager was included in the contract.

Fortune stated that was in a separate contract with its own funding and was not included in the funding scenario. That was not included in the bond sale dollars.

Council Member Johnson stated that the building construction estimate was working on a certain percent of drawings and questioned if Council said to proceed would that be the maximum contract price.

Fortune stated correct that when the contract was approved it provided for a maximum guaranteed price. The prices quoted in June were good for 180 days which was the end of December. The period was reaching a point that the pricing might not hold after December 30th and critical dates needed to be reached in order to keep the prices.

Council Member Johnson stated that the maximum price was based on 30% complete drawings but that finish items still needed to be selected and questioned if someone from city side would be overseeing that those items remained in line with the budget.

Fortune stated that the project manager would be responsible for that.

Council Member Roden asked if the prices presented were inflated due to the long range time frame to hold the prices.

Fortune stated that the prices were not inflated but represented an estimate to make sure that Clark met required obligations.

Council Member Roden asked if there was any way to redefine the costs at this point.

Fortune stated no. He indicated that staff was expecting feedback for the DISD and County by this week and that the project was nearing the end of the feasibility period which included approving the project and moving ahead to sell the bonds. The bond sale would probably be done at the November 11th meeting with November 11th to December being the financing viability period. The bonds would be sold on December 16th. At that time, the design would have to be in place in order to issue the grading permit to start project before the end of the year. Timing was getting critical to do the Intent to Sell on November 11th.

Mayor Watts asked about the definition of the development costs.

Fortune stated it was not possible to make expenses at this time and in the future issue bonds to reimburse those funds. The dollars in the contract needed to be those specifically tied to the design, final design and construction. The other dollars were not intended to be in that.

Mayor Watts asked about the construction pricing process.

Earls stated that the original pricing was submitted in June and locked those prices for 180 days. Through the process, different types of bids such as electrical, plumbing, etc. were refined. He had a fixed lump sum for the company but the subcontractors might be different. Certain components would be outstanding such as finish components.

Mayor Watts asked about the bids because the convention center had changed from the original presentation, based on the high price for the original proposal for the convention center.

Earls stated that it was his interpretation that was it was their risk to maintain the costs for 180 days even with an escalating market on materials.

Council Member Roden questioned at what point in the changing of a concept would it be that it was no longer the original concept with a need to start over.

Fortune stated that one aspect was capacity. The original design, although a three story facility, could accommodate 750 people and 2,000 for banquet facility seating. When the Master Development Agreement process was started it was contemplated that there might be some changes in the pricing. The building changed but the capacity had not changed that much. The space from the three story preserved the meeting capacity. In this case, it did not change beyond the original scope of the agreement as the agreement had language regarding capacity and not building size.

Council Member Roden asked whether State law or city policy could trigger new bids.

City Attorney Burgess stated that this was not a bid process which had less flexibility than the request for proposal which was used. The City could write in requests for flexibility with the request for proposal to have movement in the agreement.

Mayor Watts stated that the agreement stated that before the end of the feasibility period the developer would provide a loan commitment letter and a hotel budget. He stated that the City Manager had asked him what it would take for him to support the project. His concern was the data and the process of the accumulation of the data. He felt there were unanswered questions. The size of the banquet room was very important to accommodate 1800 - 2000 people and he was not sure that was still the goal. He did not want to rush into the project and was concerned about reverse engineering the entire project and was not getting a better comfort level but rather a less comfort level.

Fortune stated that the construction estimate of \$25 million had been used for some time and was discussed even when preparing the Master Development Agreement. As far as the room size, the

Mayor was correct that it was a large room but that included the break out space with other configurations of the room to be used. This would be a combination of events and not just one large 1800 event. The room was being designed for the future for increase capacity.

Council Member Engelbrecht did not feel that the larger numbers were out of line. What was important was the meeting space and banquet room. The convention space was important and that was the breakout rooms not just the larger space. Space was needed for breakout rooms for conventions; not the entire room for one convention. The small rooms were critical for the convention center.

Council Member Hawkins stated that he was not concerned with the size of the room in terms of trade shows with booths, etc. He wanted a room that could invite a lot of trade shows and conventions.

Council Member Gregory stated that he wanted a room that could handle a number of events at the same time. There had been events in the past that left Denton due to the lack of meeting space to handle them. He did not feel rushed in the process but rather that it had taken a long time to get to where they currently were. It was time to make a decision on the project or discontinue it.

Tim O'Reilly stated that it was helpful to hear the Council comments as he had conversations with his family and team on the other side with the hotel project. In regards to the pricing of the project, they had been careful on the pricing of the project from the beginning. In the end, it would be his group responsible for the entire amount of the money. The rent payment was his family responsibility to make as well as the hotel payment. He reviewed the steps involved in getting to the Master Development Agreement. The bond sale would be a \$28 million sale which they agreed to which increased their risk but were acceptable to do. The extra would be contingency for the project.

Council Member Johnson stated that this was a unique situation in that the City would be partners with the O'Reilly family. The City was pledging HOT funds etc. to the debt and if not O'Reilly would make up difference. He questioned how different that was to the City pledging a 380 agreement and whether the City could pledge those funds to O'Reilly and let them own it. Given that the agreement had to be changed anyway, he questioned if O'Reilly would be interested in doing a 380 agreement.

O'Reilly stated that three years ago they would have entertained that but at this point with the end of year deadline for construction costs and interest rate for financing it would be difficult. They had been down this road for a long time and he was not sure they were interested in that at this point in time.

Council Member Johnson stated that he was not having anyone come to him saying this was a good deal. A decision had be to made on whether the City was willing to make a bet that O'Reilly Hospitality could book the hotel and fill it and make enough to pay off the debt.

O'Reilly stated when talking to the public that the idea of risk versus reward was also considered. The risk to O'Reilly was very small and he felt that the risk to the City was non-

existent. This was a good place to a bet on. He could bring his whole team here to discuss the project and the result would be the same. The City was doing due diligence for the project.

Council Member Ryan stated that at the February 18th meeting it was discussed about competing with Frisco, etc. and he questioned O'Reilly if the project still had a wow factor with the smaller size.

O'Reilly felt that the location was a wow factor in addition to the green roof and plaza area in hotel. This was still the best project in the whole DFW area.

Council Member Ryan stated that prior to the agreement it was mentioned if the DISD and County did not participate in a proper level, O'Reilly would back off.

O'Reilly stated that was part of the budget and they proceeded in good faith and felt that the overwhelming positives would provide a support that the small contribution from them. Members of his family would have to make the decision on whether to stay with the project if there was no participation by the DISD or the County. He hoped they would lend their support as it would greatly benefit them.

Mayor Watts stated that the TIRZ within the DISD participation agreement stated that if funding affected their funding, the DISD could opt out of the TIRZ midstream. Then O'Reilly could make an election on whether to move forward. He questioned if the proforma numbers had been run if the DISD and County did not participate and what that would do to the debt service. He asked O'Reilly to address the ability to put up debt up if the DISD were to opt out midstream.

O'Reilly stated that they had those conversations with staff. He felt that was an insignificant risk that projects already started would not be grandfather by the State if the law changed.

Mayor Watts stated that he needed to see the hotel budget and the letter of commitment at the end of the feasibility period. He questioned how close they were to getting that letter.

O'Reilly stated that the lender had already looked at the letter, with one indicating that if there was a default they could step into the shoes of the defaulter. At this point, it was a matter of asking for it.

Council Member Gregory asked Kim Phillips, Denton Convention and Visitors Bureau, to speak on convention center traffic, spending, and formulas for looking at the convention industry.

Council Member Roden asked Phillips to address from her standpoint, whether the one story building would be a hard sale for rooms.

Phillips felt that the new building would be a draw and the City would be an important element

Council Member Gregory stated that much of the conversation had been about the building. There should also be discussion on how much a person would spend outside a convention. He felt it would be helpful to have in year one that there would be x number of visitors to City and would spend x dollars, the second year x number of visitors and x amount spent in the City.

Fortune stated that staff had provided that information and was posted on the website and talked about the impact of dollars spent in the community.

Council Member Engelbrecht asked about the impact on TWU and UNT.

Fortune stated that was one reason UNT wanted to partner with the project as it would help heighten the campus and what UNT could offer.

Phillips stated that they had extensive discussions with both schools. TWU recently had a bid for the ability to host a gymnastics tournament but were cut because their facilities were always booked. That activity could have been held in the proposed convention center.

Council Member Ryan questioned the outside projected generated revenue.

Fortune stated that the HOT funds were modeled out to include the new project revenue associated with the convention center plus additional revenue from existing tax bases.

Council Member Gregory stated that the anticipated money from the HOT fund was generated because of the convention center and was not taking money from the current budget. It would be money generated from the hotel and spill over from convention activities.

Council Member Roden stated that there was a need to look at the global economic development impact, especially on the other side of the highway.

Fortune stated that the long term plans of UNT were for that to be a mixed use development.

Mayor Watts stated that he would like a briefing on that issue from the UNT.

2. ID 14-0606 Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the City Council or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

Council Member Johnson asked new for a discussion on what could be done regarding the construction project on Hickory Street as the businesses in the area were suffering during the construction.

With no further business, the meeting was adjourned at 1:55 p.m.

CHRIS WATTS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS